

UNITED STATES OF AMERICA	§	
vs.	§	CR. NO. B-21-38-01-S1
JOSE ALFREDO FERNANDEZ-MARTINEZ	§	

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, JOSE ALFREDO FERNANDEZ-MARTINEZ, and files his Motion to Disclose Identity any Government Confidential Informant pursuant to *Roviano v. United States*, 353 U.S. 53 (1957) and in support thereof would show unto the court as follows:

JOSE ALFREDO FERNANDEZ-MARTINEZ is charged by a two (2) count indictment with possession of child pornography and sexually exploitation of a child in violation of 18 U.S.C. §§ 2252A(a)(5)(B) , 2252A(b)(2), §2251(a) and (e) (Notice of Forfeiture).

Defendant is still in the discovery process, and does not have direct evidence of the existence of a confidential informant in this case. This motion is filed in an abundance of caution.

The Government has a privilege to preserve the anonymity of a confidential informant in order to encourage communications by private citizens regarding criminal activities to the Government. See *U.S. v. Sanchez*, 988 F.2d 1384 (5th Cir. 1993) citing *Roviaro v. United States*, 353 U.S. 53 (1957). However, said privilege is not absolute and must be “balanced” and cannot override the defendant’s due process rights. *Id.* “If the privilege interferes with a defendant’s due process right to

prepare his defense or if disclosure of the informant(s) or his communication is essential to a fair determination of the defendant's guilt or innocence, the privilege must give way." *Id.*

The court must follow a three part test when determining whether the Defendant's constitutional rights are overridden by the Government's privilege. *Id.* The examining court must determine:

1. The informant's degree of involvement in the crime;
2. The helpfulness of the disclosure to the defense; and
3. The Government's interest in non-disclosure.

IV.

Defendant has the right to confront, cross-examine, and possibly subpoena any confidential informant(s). Further disclosure of any and all confidential informants is necessary to preserve Defendant's right to effective assistance of counsel. Information provided by a confidential informant(s), including any evidence which could be used to impeach this person, should they testify at trial, may be discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963). As such, Defendant cannot adequately prepare his defense without the disclosure of the confidential informant and an opportunity to question said person.

WHEREFORE AND PREMISE CONSIDERED, Defendant prays this Court orders the United States Attorney to disclose the identity of any confidential informant and make said person(s) available for an interview with undersigned counsel, or, in the alternative, sets this matter for a hearing, and for any further relief at law or in equity to which Defendant may be entitled.

Respectfully submitted,

MARJORIE A. MEYERS
Federal Public Defender
Southern District of Texas
Texas State Bar No. 14003750
Southern District of Texas No. 3233
Hector A. Casas

By: /s/ Hector A. Casas
HECTOR A. CASAS
Assistant Federal Public Defender
Attorney in Charge
Texas State Bar Number 03953710
Southern District of Texas No. 6816
600 E. Harrison Street, #102
Brownsville, Texas 78520
Telephone: (956) 548-2573
Fax: (956) 548-2674

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Assistant United States Attorney, Ana C. Cano regarding the Defendant's Motion to Disclose Identity of Government's Confidential Informant and she has advised that the Government is not opposed to the granting of the relief requested in this motion.

Hector A. Casas
/s/ Hector A. Casas
HECTOR A. CASAS
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of June, 2021, a copy of the foregoing Defendant's Unopposed Motion to Disclose Identity of Government's Confidential Informant Notification by Electronic Filing.

Hector A. Casas
/s/ Hector A. Casas
HECTOR A. CASAS
Assistant Federal Public Defender